STATE OF NEW HAMPSHIRE DEPARTMENT OF STATE BUREAU OF SECURITIES REGULATION

IN THE MATTER OF:)
Local Government Center, Inc; Local Government Center Real Estate, Inc.; Local Government Center HealthTrust, LLC; Local Government Center Property-Liability Trust, LLC; Health Trust, Inc; New Hampshire Municipal Association Property-Liability Trust, Inc.; LGC-HT, LLC; Local Government Center Workers' Compensation Trust, LLC; and the following individuals: Maura Carroll, Keith R. Burke, Stephen A. Moltenbrey, Paul G. Beecher, Robert A. Berry, Roderick MacDonald, Peter J. Curro,)))))))) Case No: C-2011000036))))))
April D. Whittaker, Timothy J. Ruehr, Julia N. Griffin, Paula Adriance, John P. Bohenko, and John Andrews)))

JOHN ANDREWS' SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF HIS OBJECTION TO MOTIONS TO INTERVENE

NOW COMES Respondent John Andrews, by and through his counsel, Orr & Reno, P.A., and submits this supplemental memorandum of law in support of his objection to the motions to intervene filed by the Professional Fire Fighters of New Hampshire ("PFFNH"), the New England Police Benevolent Association, Inc. ("NEPBA"), the State Employees' Association of New Hampshire, SEIU Local 1984 ("SEA"), the National Education Association of New Hampshire ("NEA-NH"), the American Federation of State, County and Municipal Employees, Council 93 ("AFSCME"), and the American Federation of Teachers of New Hampshire ("AFT") (collectively the "Moving Parties").

During oral argument on the motions, Presiding Officer Mitchell asked two specific questions designed to focus the inquiry. Mr. Mitchell asked whether in the absence of a statutory definition or precedent establishing the meaning of the phrase "interested parties" as it is used in RSA 421-B:26-a, meaning could be gleaned from precedent in other contexts. Presiding Officer Mitchell also asked whether the Moving Parties' claims were ripe for adjudication in this adjudicatory proceeding. The respective answers to the questions are "yes" and "no," and therefore, the motions to intervene should be denied.

It is undisputed that: (a) the Moving Parties seek intervention based on a claim that they are "interested parties;" and (b) the phrase "interested parties" is undefined in RSA 421-B:26-a. In the absence of a statutory definition, the Presiding Officer may rely on precedent that defines the phrase, albeit in a different context. *See State v. Njogu*, 156 N.H. 551, 553-554 (2007) (interpreting the phrase "including but not limited to" in RSA 236:130, II pursuant to "well-settled and long-standing" precedent in other contexts).

In *Appeal of Wal-Mart Stores*, 145 N.H. 635 (2000), the New Hampshire Supreme Court defined the phrase "interested party" when a party challenged the impartiality of a Department of Labor hearing officer. *Id.* at 636-637. RSA 281-A:42-a states that "[n]o person who is an interested party or an employee of an interested party shall participate as a member of the [workers' compensation appeals board] panel." However, like RSA 421-B:26-a, RSA Chapter 281-A includes, but does not define, the phrase "interested party."

In the absence of a statutory definition, the New Hampshire Supreme Court held that one is an interested party "if he or she (1) has 'a direct personal or pecuniary interest that is immediate, definite, and capable of demonstration,' or (2) has 'any connection with the parties in interest, as would be likely, improperly, to influence his or her judgment." *Appeal of Wal-Mart Stores*, 145 N.H. at 637 (*citing Appeal of Hurst*, 139 N.H. 702, 704 (1995)). "Whether a direct interest or a connection requires disqualification depends on the particular circumstances of the case." *Appeal of Wal-Mart Stores*, 145 N.H. at 637 (*citing Appeal of Hurst*, 139 N.H. at 704).

Here, the Moving Parties do not satisfy the definition of "interested parties." The Moving Parties argue that they have a financial interest in the outcome of the proceeding because they believe that if the LGC is ordered to return funds to political subdivisions, at least some of the money should be returned to their respective organizations' members. While it may be arguable that the Moving Parties' interest is sufficiently "direct" to satisfy the standard articulated in *Appeal of Wal-Mart Stores*, their interest cannot legitimately be found "immediate." *See id.* at 704.

The Staff Petition unambiguously seeks the following relief: "Order the Respondents to pay restitution to *member political subdivisions of its Pooled Risk Management Programs* pursuant to RSA 5-B:4-a, VII(b) and RSA 421-B:26, V." Staff Petition, page 54, Relief Requested number 6 (emphasis added). Consequently, the instant proceeding will determine whether: (1) any of the Respondents committed the alleged statutory violations; and if so (2) whether restitution should be made to member political subdivisions. It is only in the event that the adjudicatory hearing results in affirmative findings to the aforementioned inquiries that the Moving Parties' interests become immediate.

For the foregoing reasons, the Moving Parties are not "interested parties" within the meaning of RSA 421-B:26-a. Moreover, because the Moving Parties' interests are contingent upon the findings of this proceeding, their interests are not ripe for adjudication in this proceeding.

Conclusion

Respondent John Andrews respectfully requests that the Moving Parties' motions to intervene be denied because they are not "interested parties" within the meaning of RSA 421-B:26-a and their interests are not ripe for adjudication in this proceeding.

Respectfully Submitted,

JOHN ANDREWS

Date: 10/20/11 By:

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was forwarded this day via electronic mail to Earl Wingate, Esq., William Saturley, Esq., Brian Quirk, Esq., David Frydman, Esq., Peter Peroni, Esq., Glenn Milner, Esq., and Mark E. Howard, Esq.

Michael D. Ramsdell, Esq.